

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No. CV 15-7210 DSF (SSx)

Date 2/17/17

Title Stephen Yagman v. Joseph Curtis Edmondson, et al.

Present: The Honorable	DALE S. FISCHER, United States District Judge
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Debra Plato	Not Present
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Deputy Clerk	Court Reporter
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Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
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Not Present	Not Present
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Proceedings: (In Chambers) Order DENYING Motion for Attorney's Fees; Order GRANTING Motion to Retax Costs; Order DENYING Motions for Sanctions (Dkt. Nos. 242, 248, 257, 258)¹

Defendant Michael Colello's motion for attorney's fees is DENIED. Colello is entitled to fees under California Code of Civil Procedure § 425.16 relating to the state law claims disposed of by his anti-SLAPP motion to strike. However, Colello seeks fees for periods well beyond the granting of the motion to strike. Even for the period before the motion was granted, the requested fees are not broken out in a manner than would allow the Court to determine if the fees were incurred for claims that were the subject of the motion to strike. Defendant also fails to adequately support his counsel's requested hourly rate. As for the other stated grounds for fees, this matter is far too attenuated from the arbitration between the parties for the California Mandatory Fee Arbitration Act to apply. The MFAA only provides for fees on retrial of an arbitrated matter or where the award was "confirm[ed], correct[ed], or vacat[ed]." See Cal. Bus. & Prof. Code §§ 6203(c), 6204(d). This case, while related to the arbitration, was not a retrial of the arbitration and the award was not confirmed, corrected, or vacated. Rule 11 sanctions are inappropriate because Defendant failed to follow the procedural requirements of that Rule.

¹ The Court deems these matters appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearings set for February 27 and March 13 are removed from the Court's calendar.

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Plaintiff's motion to retax costs is not opposed. The Court deems the lack of opposition to be consent to the granting of the motion. L.R. 7-12; see also Ghazali v. Moran, 46 F.3d 52 (9th Cir. 1995); Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1994). The costs award is vacated, and the Clerk shall retax the costs in this matter after consideration of Plaintiff's objections.

Plaintiff's motion for sanctions is DENIED. As noted, the motion for fees was not frivolous because Defendant is, in theory, entitled to fees under § 425.16 even if he has done an inadequate job of proving the reasonable amount of fees in his motion.

IT IS SO ORDERED.